ART. V. — *The Lawyer and his Clients.* Correspondence of Messrs. DAVID DUDLEY and DUDLEY FIELD, of the New York Bar, with Mr. SAMUEL BOWLES, of the Springfield Republican. Springfield. 1871.

BOSWELL gives this account of a conversation with Dr. Johnson: —

"I asked him whether, as a moralist, he did not think that the practice of the law in some degree hurt the nice feeling of honesty.

"*Johnson.* Why, no, sir, if you act properly. You are not to deceive your clients with false representations of your opinion; you are not to tell lies to a judge.

"*Boswell.* But what do you think of supporting a cause which you know to be bad?

"*Johnson.* Sir, you do not know it to be good or bad till the judge determines it. I have said that you are to state facts fairly; so that your thinking, or what you call knowing, a cause to be bad must be from reasoning, must be from your supposing your arguments to be weak and inconclusive. But, sir, that is not enough. An argument which does not convince yourself may convince the judge to whom you urge it; and if it does convince him, why then, sir, you are wrong and he is right. It is his business to judge; and you are not to be confident in your own opinion that a cause is bad, but to say all you can for your client, and then hear the judge's opinion.

"*Boswell.* But, sir, does not affecting a warmth when you have no warmth, and appearing to be clearly of one opinion when you are in reality of another opinion, — does not such dissimulation impair one's honesty? Is there not some danger that a lawyer may put on the same mask in common life, in the intercourse with his friends?

"*Johnson.* Why, no, sir. Everybody knows you are paid for affecting warmth for your client; and it is therefore properly no dissimulation; the moment you come from the bar you resume your usual behavior."

And it is continually said: "One side of a case is right and the other side is wrong. Counsel, then, on one side or the other in a cause, is always arguing against the right and in favor of the wrong."

The question of the duties of counsel has recently had a special interest given it by the correspondence between Mr.

David Dudley Field and Mr. Samuel Bowles. No one, at this day, will claim for counsel the latitude allowed them by Dr. Johnson, in the extract just given. But what is all this talk of affecting warmth when you do not feel it, of supporting the wrong side of a cause, of arguing against your belief, of the insincerity or dishonesty of the advocate? Where is the blame to be placed of prosecuting bad causes? What do counsel commonly do? What can counsel rightly do? And what have counsel, in fact, of late years been doing?

It is yet to be learned how a lawyer can argue a cause without a client, how he can argue a point of fact without having witnesses, how he can argue a point of law without citing cases. Perhaps, even if counsel go into court with a bad cause, there is as much guilt on the client's shoulders, who brought the cause to the counsel, as on the counsel's shoulders, who took the cause from the client. Moreover, it is one of the commonest things in the world for judges to differ in their views of the law of the same case, for jurymen to differ in their views of the facts of the same case, for clients to differ in their views of the justice of the same case, and for witnesses to differ in their stories of the same case, all being equally honest. If, then, judges, jurymen, clients, and witnesses can honestly err, why are the counsel deprived of the same very reasonable privilege? For, be it remembered, a counsel goes to trial, hearing one side of his case from one client, and judges and jury are often in doubt and utterly unable to agree, after hearing from both clients both sides. It may, then, be possible for counsel to be on what is finally adjudged to be the wrong side of a cause, and still have been honest in his advocacy of it.

And what does the counsel, in conducting the trial of an ordinary cause in a court really do? For, of course, the abnormal knaves of the profession, as in any general discussion, are here to be thrown out of consideration. In the case of Ryves *v.* The Attorney-General, which attracted so much notice a few years since, where Mrs. Ryves attempted to establish her claim to royal lineage, this occurrence is reported: —

"Dr. Smith then proceeded to address the jury for the petitioner, and was beginning to say that 'on his honor he believed his client's case to be well founded,' when the Lord Chief Justice interfered, and peremptorily said he 'could not allow the learned counsel to pledge his honor on his own belief. To do so were a violation of the rules of the profession, and a dishonor to counsel.' Dr. Smith apologized."

And this same thing would be done in any rightly ordered court. It is understood, that counsel, in arguing cases, do not make statements of matters of fact on their own authority. They comment on what witnesses have sworn to. They are not allowed to do more than that. And as to arguments on points of law, generally, if counsel have no points of law in their cause that deserve a hearing, they do not get a hearing. And few intelligent counsel will take up the time of a heedless judge by talking nonsense. Moreover, there remains, behind all these points, the one fact, that counsel, who often argue losing causes, very soon argue no causes at all.

And as to the question what counsel can rightly do, it is plain in the beginning that, on many points, the duties of counsel and client present precisely the same questions.

It is wrong for a client to take away another man's property, or keep him out of his rights. It is wrong for counsel to help his client do either of these things by the use or abuse of the process of the court. And, as to the mere argument of causes in court, if a counsel never knowingly misstate facts or law, he can have a very clear conscience.

There remains one other point. If it be considered settled what a counsel has a right to do for his clients, there still remains the point in some minds to be decided, what clients counsel has a right to have. And, on this point, the choice of the lawyer must be absolutely unlimited, and for his choice he can be blamed by no one. A lawyer has the right to take any clients he chooses. Sinners do have rights and must have justice. They cannot have justice without counsel. In a criminal proceeding no lawyer has a right to see a prisoner condemned contrary to the law and the evidence, for lack of counsel to protect him. In a civil cause every lawyer does, as a matter of fact, and does rightly, consult his own wishes as to accepting or rejecting particular cases or particular clients. The want

of a sufficiently large retainer is a ground which will appeal at once to the reason of any professional man, and very rightly. Men of reputation cannot be asked to give the power they have gained after long years of toil and study without being paid for it. Any lawyer is at perfect liberty to take any client that he chooses, with blame from no one. But what he may do for his client, after he takes him, is not matter to be unquestioned by others.

This brings us to the correspondence between Mr. David Dudley Field and Mr. Bowles. In December, 1870, in the New York correspondence of the Springfield Republican appeared some very severe remarks in relation to Mr. Field's professional conduct and reputation. Mr. Field wrote to Mr. Bowles, complaining of the publication, and asking a disavowal of the offensive matter. Thereupon ensued a long correspondence. It is here possible only to give a very brief statement of the points made or attempted to be made on either side.

Mr. Bowles makes two charges against Mr. Field: first, that Mr. Field has, in Mr. Fisk and Mr. Gould, clients notoriously bad men, who have robbed and are now robbing other men of their property; and second, that Mr. Field, as their counsel, has aided them in so doing. This is the substance.

To this Mr. Field replies that he is not responsible to any one for his choice of clients, and that, assuming his clients to be bad men, it is not only his, Mr. Field's, right, but his bounden duty, to defend them in their rights, and that he never has done anything but defend them in their rights. He says: —

"To give this as a reason for not defending them, is equivalent to saying that the saints must have a monopoly of lawsuits. If a saint sues a sinner, the sinner shall not be defended. If it should happen that a saint wrongs a sinner, the sinner shall not sue the saint. . . . . In this state of things I know no better general rule than this: that the lawyer, being intrusted by government with the exclusive function of representing litigants before the courts, *is bound* to represent any person who has any rights to be asserted or defended. If a person has no rights, the lawyer is not bound to assist. If he has any rights, the lawyer is bound to see them respected, if he can. . . . . I do not assent to the theory of Brougham, that the lawyer should know nobody but his client. I insist that he should defend his client *per fas* and not *per nefas*. By this rule I am willing to be judged.

" . . . . I am quite willing to leave to time the formation of a just public opinion. When that time comes, it will be known that, whatever may be the faults of the clients, their counsel, or that one of them for whom I speak with knowledge, has been governed by nothing but a sense of duty. . . . . You have ventured to arraign my professional conduct. I repel your charge, and challenge you to specify an instance. You fail to specify any, but say public opinion is against me. . . . . That will not do; you must go further or submit to be branded as a libeller. . . . . I have never been consulted beforehand about the management of the Erie Railway, or the issue of any of its stock or bonds, or the payment of any dividend to any stockholder or class of stockholders, or about what is known as the Erie classification bill, or about the gold operations of 1869, or any of the private transactions of Messrs. Gould and Fisk, or either of them, or about any transaction whatever of this company or these gentlemen, to which, so far as I now recollect, any exception has been taken."

And, finally, Mr. Bowles goes so far as to admit: —

"I am only impressed with the fact that you believe yourself right, and that you are acting sincerely, if not intelligently. . . . .

"You have sinned against no statute; I will not undertake to say, even, that you have violated any prescript of the code professional. Within those lines you are wiser than I, and I shall not follow you. . . . .

"Thus I dismiss the most of your argument as purely technical, and not pertinent to my view of the subject."

It has been here attempted to give with fairness, in the words of the disputants themselves, the main points of this correspondence. And it must, it would seem, be admitted that Mr. Bowles does not make a very strong case. Mr. Field is a very cunning master of fence. Mr. Bowles had not the knowledge necessary for him on these points to cope with his opponent; and, as far as this controversy with Mr. Bowles is concerned, Mr. Field is undoubtedly right. Neither Mr. Bowles nor any one else has the slightest right to question Mr. Field's choice of clients. Nor has Mr. Bowles any right to publish, as he did, this statement about Mr. Field, that " his connection with Fisk and Gould secures him the favor of Barnard and the other ring judges, though it has destroyed his reputation as a high-toned lawyer with the public," unless he can, when called on, come forward with the facts to prove his statements.

This dispute has drawn to itself great attention, and rightly. Mr. Field has as nearly a cosmopolitan reputation as any member of the bar in this country. He is a man of great acuteness of mind, a very thoroughly read lawyer, has a muscular strong grasp of legal principles, and he well deserves the highest opinions that have ever been held of his ability. Moreover, he was educated in a day when the purity of the bench in New York was never for an instant questioned, when the most honorable traditions of the profession were taught and practised. He continually shows in court his thorough acquaintance with these traditions, when an adversary violates the least of them. Mr. Field belongs to the time when, as Mr. Evarts said in his address at the meeting called for the organization of the Bar Association of New York, "for a lawyer to come out from the chambers of a judge with an *ex parte* writ that he could not defend before the public, would have occasioned the same sentiment towards him as if he came out with a stolen pocket-book." Beyond a doubt, Mr. Field knows very well what the honor of his profession demands of him. If there have been professional sins on his part, they surely have not been sins of ignorance. If such a man as Mr. Field has been guilty of the outrages with which Mr. Bowles and other men continually charge him, the public should know it, and should well ponder on it. For it shows something "rotten in the state of Denmark."

It is proposed, then, here to briefly examine some of the legal features of one of Mr. Fisk's "raids," as he calls them, — the contest for the control of the Albany & Susquehanna Railroad. This litigation, in its activity, lasted only about two months. But in this space of time there was a perfect meteoric shower of suits, injunctions, and receiverships, that has not been surpassed in any of the Erie wars. It is not intended here to give a history of them, or even any mention of more than three or four of these suits, but simply to examine, at no great length, the character of a very few of the legal proceedings taken by counsel on Mr. Fisk's side of this controversy, and then to examine Mr. David Dudley Field's part in some of these proceedings.

And it will be necessary, for the right understanding of the

legal proceedings here mentioned, to give a very short statement of some of the cardinal unquestioned principles of the law in relation to the granting of injunctions and receiverships, which, under the New York code, are both called provisional remedies. But these principles here to be stated are very rudimentary and simple, and easily understood by any layman.

Under the New York code the pleading made by the plaintiff is called the complaint, and in its form it is somewhat like the old bill in chancery; and it has ordinarily a verification on the part of the plaintiff, to the effect that "it is true except as to the matters therein stated on information and belief, and as to those matters he believes it to be true." This complaint proves nothing. It is merely the plaintiff's statement, for the purposes of the trial, of what he conceives to be the facts constituting his cause of action. And they must be proved by him on the trial, before he can have his judgment or decree.

The writ of injunction, or injunction order, as it is termed in the practice under the New York code, is an order enjoining or forbidding, pending the suit, some act on the part of the defendant which would be specially injurious to the plaintiff, and against which the plaintiff has no other protection or remedy. And, under the New York practice, this injunction order is continually granted, and rightly granted, *ex parte*, or on the application of one party without hearing the other.

Of course, however, in such cases, the court, under the decisions, and in accordance with every principle of law and justice, requires the clearest proof, on the part of the plaintiff, of his rights, and of the damage to his rights, which would ensue without the injunction. This proof, too, must be by affidavit. The affidavit, too, must show facts. It must be, too, the affidavit of a party testifying of his own knowledge, and not of hearsay. The necessity of an affidavit no one would ever question; but, under the circumstances, it may be well to cite one New York authority. Mr. Justice Ingraham says, in the case of Hecker *v.* The Mayor, &c., 18 Abbott Rep. 371: "I have repeatedly held, that an injunction should not be granted on the mere verification of the complaint. This has always been the rule. And such rule has been adhered to

since the adoption of the code." These points are law and common sense. And it is even questionable whether a judge has any jurisdiction to grant an injunction without an affidavit, and whether, if he does so, the injunction is not absolutely void.

And in granting receiverships of property, the plaintiff, both under the old equity practice and under the New York code, is required clearly to establish two points, — first, that he himself has some right in the property which is the subject of the action; and, second, that the property is in danger of being lost or materially injured, pending the suit, if left in the possession of the defendant. And this is very reasonable. For no plaintiff can, with reason, ask a court to take possession of property for him, unless he has himself some right in the property. Nor can he ask a court to take such property from the possession of the defendant, unless there is danger of injury if the property stays where it is. And in the case of a receivership as well as of an injunction, these points, required to be proved, must be proved by affidavit. The affidavit, too, must show facts. It must be, too, the affidavit of a person testifying of his own knowledge, and not of hearsay.

These points being stated, some parts of the Albany & Susquehanna litigation may be considered. The contest was between the Fisk party and the Ramsey party for the control of the road, and the main point, finally, was to carry the election for directors, on the 7th September, 1869. It was decided, in the case of The People *v.* The Albany & Susquehanna Railroad Company and Others, that, out of about thirty thousand shares of stock of the company, Mr. Fisk and his friends controlled only about six thousand five hundred shares. The court, too, further decides that Mr. Fisk and his associates, owning only about one fifth of the stock, in order to get control of the road on the day of the election, "took possession of one of the rooms of the office of the company, and filled the same, and made an unlawful organization of themselves, as a pretended stockholders' meeting; that the holding thereof was in pursuance of a previous conspiracy and fraudulent design between said associates, made for the purpose of interfering with and hindering a lawful election, and procuring an

unlawful and sham election; that in pursuance of said conspiracy they brought from the city of New York a large number of men, who were not stockholders of the company, and who were rough, rude, and dangerous persons, and placed them in said room, with the intent and design that they should participate in said meeting, and prevent lawful stockholders from attending said meeting; that in further execution of said conspiracy, and with intent to hinder the defendant, Ramsey, the president of said company, and William L. M. Phelps, the secretary and treasurer of said company, and Henry Smith, the counsel of said company, from performing their duties at said annual election, and with intent thereby to hinder a lawful stockholders' meeting, they did, on the 6th day of September, 1869, fraudulently procure an order for the arrest of said Ramsey, Phelps, and Smith at or about the time of the organization of the said pretended stockholders' meeting." The foregoing statement is condensed, by simply leaving out from the decision of the court words and phrases here useless, but there necessary, which do not in the least vary the meaning.

But general statements are not enough, nor do they, at all, by themselves, concern Mr. David Dudley Field. Three or four of these proceedings will themselves be examined.

The first proceeding, worthy of notice, was the suit of Mr. Joseph Bush. Mr. David Groesbeck and some other gentlemen held three thousand shares of this Susquehanna stock, which they had purchased of the company. In his complaint, Bush stated that, "as he is informed and believes," this Groesbeck stock was illegally issued, and he asked to have a receiver of this stock appointed by the court.

Now in this suit of Mr. Bush, brought by Messrs. Field and Shearman, there were three peculiarities: first, there was no affidavit as to any point; second, the plaintiff did not pretend to have any interest whatever in this stock; third, the plaintiff did not pretend that there was any danger whatever of injury to the stock. However, on the 14th August, 1869, an order was granted, without a hearing, by Mr. Justice Barnard, appointing William J. A. Fuller receiver of these three thousand shares of stock. Mr. Fuller had been a clerk in Mr. Field's office. He took possession of the stock, under

this order, for the purpose and with the intent, as Mr. Justice Smith says in his decision, of voting on it in the Fisk interest, in opposition to the wishes of the rightful owners; and he did so vote.

Now, even if it had been clearly proved, by affidavit, that this stock had been illegally issued, the most that any one could by possibility have claimed, was that an injunction should issue restraining any one from voting on it. But such an injunction would only have hindered Mr. Groesbeck from voting on the stock. The receivership allowed Mr. Bush, through his receiver, to vote on it himself. And the result of this manœuvre was, that three thousand votes were taken from the Ramsey interest and given to the Fisk interest, and were used in the Fisk interest, by an order obtained, on no proof whatever, by any person whatever, of any fact whatever.

Mr. Ramsey was himself, however, the head and front of the opposition to Mr. Fisk's plans. He was the president and a director of the company.

A suit was commenced in the name of David Wilbur, who lived in Otsego County. There are courts and counsel in Otsego County quite able to give Mr. Wilbur justice, if he wished justice. Mr. Wilbur, however, begins his suit in New York City. Messrs. Field and Shearman are his attorneys. Mr. Wilbur, in his complaint, alleges that, "as he is informed and believes," Mr. Ramsey has done certain things and has not done certain other things. No affidavit of any person to any fact is offered. And on the 4th of August an injunction order is obtained *ex parte* from Mr. Justice Barnard, ordering "that the defendant, Joseph H. Ramsey, refrain from exercising the offices of president and director, or either of them, and from issuing any stock of said company, or in any way interfering in its affairs, until the further order of this court."

Now if it had been clearly proved, by affidavit, of some person, that some party defendant had done or was about to do something which would injure the plaintiff, a court of equity might have enjoined such defendant from doing some particular wrong. No proof whatever was given, by any party, of any wrong, and Mr. Ramsey was enjoined from doing any act.

The Ramsey party met this by a counter-injunction, restraining four members of the board of directors from acting as such, on the allegations that these four directors had fraudulently entered into a conspiracy to transfer the property and control of the railroad to the Erie Railway Company.

The four enjoined Fisk directors, as they were called, were Leonard, Herrick, North, and Wilbur. The injunction is served on them, on the morning of the 6th August, in Albany. Leonard and Herrick live in Albany. They wish justice speedily from the nearest source. They go at once to New York City. They go to Mr. Fisk's Grand Opera House. They find there Mr. Fisk, Mr. Gould, and Mr. Shearman. As to what follows, Mr. Thomas G. Shearman's version of the events will first be given, with the assumption that it is true.

A complaint is prepared, the plaintiff this time being Azro Chase. Mr. Chase also lives in Otsego County, where there are courts and counsel quite able to give him justice if he wishes it. The same attorneys, Messrs. Field and Shearman, appear for Mr. Chase, and his suit is brought in New York City. On his complaint an order is obtained from Mr. Justice Barnard, appointing Charles Courter and James Fisk, Jr. receivers "of all the property of the Albany & Susquehanna Railroad Company." Messrs. Field and Shearman obtained this order that took away one hundred and forty-two miles of railroad and the entire property of a large corporation, amounting to several millions of dollars, from a judge, at chambers, without notice and without a hearing.

The order suspending Mr. Ramsey was served on him on the morning of the 5th of August. The order suspending Leonard and his three co-directors was served on the morning of the 6th of August. The order for the Fisk receivership was granted about half past ten o'clock on the evening of the 6th. The receivers at once started from the Grand Opera House to take the night train for Albany.

But on the arrival of these receivers in Albany on the morning of the 7th, the road was already in the possession of Mr. Pruyn, a receiver appointed in an action commenced the day before in the Supreme Court at Albany, where the property was. And here came, on the part of the Fisk party, what is,

so far as the writer is aware, the most extraordinary proceeding recorded in the history of English or American law. And to make clear the nature of the proceeding, it will be necessary to explain briefly what is a writ of assistance.

Where an order directing the delivery of certain property to a receiver has been properly served, and the receiver is still unable to get possession of the property, in certain cases a writ of assistance issues, directing the sheriff to put the receiver in possession of that property. To warrant the issuing of the writ, two points must be established: first, that the order appointing the receiver has been duly served; and, second, that the delivery of the property has been refused after such service. Moreover, as in the other cases before mentioned, the points must be clearly proved by the affidavit of a person swearing to them positively of his own knowledge.

In this Chase suit Mr. Fisk was unable to get possession of the property of the railroad. He and his counsel were in Albany. The property was in Albany. Mr. Chase, the plaintiff, was in Albany. If they had not their rights, and speed were necessary in getting them their rights, the nearest court was, of course, to be found. But application, in this case, for the writ of assistance, is made by Mr. Thomas G. Shearman in New York City, on this same 7th of August, to Mr. Justice Barnard. So Mr. Shearman testifies. Of course he has himself no knowledge of what has been doing in Albany an hour before. But this Prospero, in his lonely cell at the Grand Opera House, hath a weird potency. Mr. Shearman makes an affidavit. He does not swear that the order appointing the receivers has ever been served on any one. He does not swear that he has "knowledge" of anything. Mr. Shearman makes his affidavit that he has received a telegram from Albany, and that he "is informed" that opposition is made to the receivers by certain persons; that attempts have been made to eject the receivers from the office of the company by force. And on no other affidavit than this, Mr. Shearman testifies that he obtained a writ of assistance from Mr. Justice Barnard, directed to the sheriff of Albany County, and all other counties where the company had property, directing them to put Mr. Fisk and Mr. Courter in possession of that property.

This is not quite enough, however. Mr. Shearman, by a supplemental complaint, brings in new parties. And then appears, with the writ of assistance, on no affidavit but the one before mentioned of Mr. Shearman that he is "informed" of something by a telegram, what purports to be an injunction, of which the terms are so singular that two clauses of it will be given verbatim. The order enjoins the railroad company, its president, all its directors, the receiver appointed in another action, the plaintiff in that other action, the sheriff, and the *Police Commissioners of Albany* "from disturbing or interfering with Charles Courter and James Fisk, Jr., receivers appointed in this action, in the performance of their duties as such receivers; from interfering with the possession of such receivers; from hindering or delaying them in taking possession of any property or effects of the above-named railroad company, or held in trust for it; from refusing or neglecting to deliver to the said receivers all and every the property and effects of the said company, or that may be held in trust for the same, of any name and nature, real or personal; and from inciting or encouraging any opposition, or *permitting any opposition to be made* to the said receivers in the discharge of their duties as such." "That all the defendants refrain from commencing or prosecuting any action for the purpose of obtaining an injunction against said company, or its officers, agents, or servants, or against said plaintiff herein, or said receivers appointed herein, and also from commencing or prosecuting any action for the appointment of a receiver or receivers of said company, or from making any application therefor, except to this court, in this action."

As has been stated, the Police Commissioners of the city of Albany were made parties defendant by this supplemental complaint. The only allegation in this complaint which even mentions or refers to these commissioners is as follows: "That, as the plaintiff is *informed and believes* . . . . , the said . . . . , have attempted to eject the said receivers by force and violence, and are still attempting so to do." Not one word of evidence was laid before Mr. Justice Barnard when he granted this injunction. The papers which were laid before him showed clearly that there could be no evidence.

It must be admitted to have a kind of grim grotesque humor. Armed with two or three injunctions of this kind, one might with safety say, with Alexander Selkirk, "I am monarch of all I survey." But, after all, this injunction is partial, incomplete. It is applicable to only one particular case. It is better to find at once a formula for an injunction for all cases. And, none being found in the books, the writer takes the liberty of suggesting the following, which is doubtless capable of great improvement. Have in the beginning the ordinary complaint, that, "as the plaintiff is informed and believes," some one, no matter who, has done something, no matter what. Leave out altogether the names of parties defendant, to be inserted as need arises. Let the injunction read, "it is ordered that the defendants, and each of them, refrain from refusing or neglecting to do anything that the plaintiff may request." Or, in order to have definiteness of evidence in case of a proceeding for contempt, it might be well to amend the last clause thus: "that the plaintiff may request in writing." And, of course, there must be the invariable protective provision, "that the defendants bring no suit, and make no application for relief, *except to this court in this action.*" Add a receivership of the defendants' property. And if injunctions of this kind are adopted, it will at once do away with the necessity of any examination as to the limits of the powers of a court of equity. And the terms of such an injunction are no broader than those of the one already cited.

But the manner of serving this new Chase injunction, and of executing this writ of assistance, is another novelty. Most persons know that an injunction order cannot be served without producing the original order. Nor can a writ be executed by the sheriff until he has it in his possession. The injunction was to be served and the writ executed in Albany. Both writ and injunction, as a matter of fact, were in New York. Inconvenient it was, surely. The inconvenience might, perhaps, have been avoided, had application been made to a nearer court. However, the order and writ had been obtained by telegraph; why not serve and execute them by telegraph?

About nine o'clock in the morning Mr. Fisk has his misadventure in not getting possession of the property of the road.

About three o'clock in the afternoon the sheriff in Albany has in his hands what purports to be the writ of assistance, issued in New York City; and the counsel of Mr. Gould is with him, urging him to execute it. The counsel of the railroad company calls the attention of the sheriff to the fact that the ink is not dry on the writ, signed in New York by a New York justice, reciting on its face matters that had taken place in Albany only five or six hours before. And the sheriff very wisely concluded that, on such process, it would be dangerous to try to take away the entire property of a large railroad corporation. The words of the writ had been sent by telegraph, by Mr. Shearman, from New York. The original writ was sent from New York by the train that left there at four o'clock, P. M., and reached Albany about ten o'clock in the evening. So Mr. Shearman testifies.

This is, perhaps, the nearest approach yet made, on the part of the ordinary human being of the period, to omniscience and omnipotence. But how far is this to go? You can obtain your writ, with the evidence at one end of the telegraph and the writ at the other end. You can execute your writ with the original at one end and the sheriff with the copy at the other end. Why not do away altogether with the two useless elements, the evidence and the original writ, and get on with copies alone? Or may we make our own originals? Or may we have our writs and orders signed in blank? Among the glorious inventions of the nineteenth century will be recorded that of obtaining process of court without evidence, and executing process of court without having it. The name of the inventor is unknown; but the glory of the invention lies, as far as yet appears, between Mr. Thomas G. Shearman and Mr. David Dudley Field.

"Non nostrum inter vos tantas componere lites."

Who will say, hereafter, that law is merely a science of precedents?

But were these orders and writs ever signed in New York? And were they signed anywhere on the days of their date? Testimony was, during this litigation, taken in regard to the circumstances under which these orders, which were served in

so extraordinary a manner, were obtained. The testimony was very peculiar. It was substantially as follows.

Mr. Shearman, during these proceedings, gave his testimony in relation to the obtaining the first order, of the 6th August, which appointed the receivers. According to this testimony, the first thing done, to his knowledge, as to the appointment of Fisk and Courter as receivers, was done in the treasurer's office at Mr. Fisk's Grand Opera House, on the evening of the 6th of August, about eight, P. M. The order was taken by his partner from the treasurer's room, in order to procure Mr. Justice Barnard's signature, and this partner was not absent from his (Mr. Shearman's) presence longer than from 10.20 to 10.35 P. M.; and this partner returned with what purported to be Mr. Justice Barnard's signature at the foot of the order. Mr. Shearman also stated that he was then informed by Mr. Fisk that Judge Barnard was at the house of a friend in the neighborhood. Neither this partner, who is stated to have obtained Judge Barnard's signature, nor Mr. James Fisk, who is stated to have given Mr. Shearman information as to Judge Barnard's whereabouts, were at any time produced as witnesses.

Mr. Courter, too, one of the receivers, testified that on the morning of the 7th, when they reached Albany, he had no paper relating to the receivership in his possession; nor could he swear that Fisk had the original order at the railroad office on that morning.

Nor can this order, the place of which in space and time it is so hard to determine, be anywhere found in the minutes or records of the court.

It did not appear in evidence that Judge Barnard was in New York at all on the 6th August. It did appear in evidence that he was in Poughkeepsie as late as seven, P. M., on the evening of that day. The distance from Poughkeepsie to New York is about seventy-five miles by rail.

The injunction order of the 7th August, even Mr. Shearman swears, was not in Albany when it was pretended to serve it there. The writ of assistance of the same day, Mr. Shearman swears, was not in Albany when it was pretended to execute it there.

This writ of assistance, Mr. Shearman swears, "purports to have been granted by Judge Barnard, sitting at special term in the court-house, and such was my information and belief." The order for leave to file a supplemental complaint, Mr. Shearman swears, was made on the same day. And he says, "I drew the papers and sent them to the court-house."

The minutes of the "special term in the court-house" for the 7th August show that this "special term" was held, not by Mr. Justice Barnard, but by Mr. Justice Ingraham.

When and where were this writ and this order granted?

Of another order, bearing date the 10th August, Mr. Shearman swears: "It was granted by a special term of the Supreme Court, held by Judge Barnard. I cannot remember on what day, but it was between eleven, A. M., and one, P. M., at the court-house in New York City."

The minutes of the "special term of the Supreme Court," held on this 10th August, "at the court-house in New York City," show that this "special term" on that day was held, not by Mr. Justice Barnard, but by Mr. Justice Ingraham. On Friday, the 6th August, Judge Barnard was in Poughkeepsie, where his mother was dangerously ill. She died on Sunday, the 8th, and her funeral was on Tuesday, the 10th.

Was this order of the 10th August granted by Mr. Justice Barnard? And if so, when and where was it granted?

It has not been here attempted to give an account of every step in these legal proceedings, so called. Merely those which are most pertinent to the matter in hand are here related. And the only remaining occurrences that call for notice here are the proceedings connected with the election on the 7th September, 1869. These proceedings, on the part of the Fisk party, embraced several points.

The inspectors for the election had been chosen, as they always were, at the preceding annual meeting of stockholders, and the facts making their appointment regular or irregular had been long known to the Fisk party and their counsel. An injunction was obtained enjoining these inspectors from acting as inspectors at the election. This injunction, with printed copies ready for service, was in Albany on the 6th, the day before the election. Of this injunction Mr. Justice Smith

says: "It seems to me quite clear that this injunction was improvidently granted. . . . . The use that was made of this injunction is, I think, the more serious ground of objection to it."

This would dispose of the inspectors, who were supposed to be unfriendly to the Church-Fisk interest, and friendly to the Ramsey interest. But further "legal process" was necessary.

A suit was commenced in the name of the Albany & Susquehanna Railroad Company, as plaintiff, against Mr. Ramsey, the president, Mr. Phelps, the secretary and treasurer, Mr. Henry Smith, the counsel of the company, and Mr. Pruyn, the receiver, who was also a stockholder in the Ramsey interest. Messrs. Field and Shearman commenced this action, as attorneys for the plaintiff, although there was regular counsel of the railroad company, regularly appointed, and they must have known it. It was stated in the complaint, which no one, either attorney or client, ventured to swear to, that these defendants had, "with intent to cheat and defraud the plaintiff, clandestinely and without authority removed" from the office of the company certain of the company's books. As matter of fact, these books had, on the night of the 5th August, been removed for the purpose of securing them from Mr. Fisk, whether unnecessarily or not needs no discussion here. This action was not brought to recover the books, nor was there any pretence that it was brought for that purpose. It was brought to recover damages, laid at the sum of fifty thousand dollars, for the removal of these books, which were, as matter of fact, returned uninjured before service of process on either of the defendants. And in this suit an order of arrest was granted by Mr. Justice Barnard, holding each of the defendants to bail in the sum of twenty-five thousand dollars.

The authority of Messrs. Field and Shearman to bring this action, and the purpose in bringing it, will more fully appear hereafter. Mr. Justice Smith says of it: "The order of arrest was unauthorized. But assuming it to be otherwise, the order to hold to bail in the sum of twenty-five thousand dollars was most extraordinary and exorbitant, and must have been procured to be used, as it was used, on the day of election, in aid of the fraudulent purposes of Mr. Fisk and his associates."

These election proceedings are the ones that specially concern Mr. David Dudley Field.

The election was announced for twelve o'clock, noon, of the 7th September. On that day Mr. Fuller, the receiver of the Groesbeck stock, an impartial officer of the court, meets Mr. Fisk and Mr. Shearman at breakfast, receives his Fisk ballots from Mr. Shearman, and rides to the company's offices with him, about half past eleven o'clock. So Mr. Fuller testifies. On their way they see the injunction served on one or two of the inspectors, and it was about the same time served on all three of them, within less than half an hour of the time of the election. At half past eleven o'clock, Mr. James Fisk, Jr. and Mr. David Dudley Field enter the railroad company's office together, and immediately behind them Mr. Fisk's band of "rough, rude, and dangerous" men, to the number of forty or fifty; Mr. Fisk saying to them, as one witness testifies, "Come on, boys, follow me." According to the testimony, the appearance of these men was much like that of Sir John Falstaff's levies, of whom the Knight said, "No eye hath seen such scarecrows. . . . . There 's but a shirt and a half in all my company." And Sir John's final determination, as given in the play, "I 'll not march through Coventry with them," might have been a safe precedent, for both client and counsel, in the case in question. These men nearly filled the directors' room, where the stockholders' meeting had been appointed. They had just come from New York, and each of them had received his proxy on one or two shares of stock. Mr. Field and Mr. Shearman were both there, advising as counsel through the whole proceeding.

At a quarter before twelve, Colonel Church, one of Mr. Fisk's proposed co-directors, was chosen chairman of this stockholders' meeting.

Immediately thereafter the first set of resolutions was passed. One of them was to the effect that, "Whereas, Samuel Hand, Ralph Lathrop, and William Haskell were declared inspectors at the last annual meeting, and whereas they have not been and are not now stockholders, and *have been enjoined* from acting as inspectors, *Resolved*, that . . . . the offices of inspectors of election be and the same are hereby declared vacant."

And another resolution was then passed, appointing, as inspectors, three of Mr. Fisk's friends, one of them being Mr. Gould's counsel throughout this whole contest, and another being Mr. Bush, the plaintiff in the receiver suit. This was the first set of resolutions.

A second set was offered and passed, at twelve o'clock, or a few seconds after, to the effect "that this meeting proceed with the annual election of directors and inspectors." The newly appointed inspectors had proceeded to the treasurer's room immediately after their election, ready to begin receiving votes, precisely at twelve o'clock, and they did so begin to receive votes. Mr. Field and Mr. Shearman were at their side to advise them, and these "rough" men, according to the testimony, voted under the eyes of Messrs. Shearman and David Dudley Field, until Mr. Fisk said, "Let them boys go back. There is enough of them voted. Drive them back."

Just at this time the sheriff appeared, arrested the president, the secretary, and the counsel of the company, under (as the court say) an "unauthorized" order, holding them to bail in the "extraordinary and exorbitant" sum of twenty-five thousand dollars, in pursuance of this "fraudulent conspiracy." Surely there was an artistic completeness to this plan, by whomsoever it may have been arranged.

Saith my Lord Bacon, in his Essay "Of Cunning," "There be, that can pack the cards, and yet cannot play well."

Mr. Groesbeck and his friends seemed to think that they had some rights in relation to their three thousand shares of stock. They had consequently begun a suit, in which they set forth that they were the owners of these three thousand shares of stock (as the court say they undoubtedly were); that through a fraudulent conspiracy on the part of Mr. Fisk and his associates a receiver had been illegally appointed, who had taken possession of their shares (as the court decided was the case); and that this receiver intended to vote thereon (which was also the case, for he did so vote). They thereupon asked and obtained an injunction order, enjoining the holding of any election, unless they, the plaintiffs, were first allowed to vote on their three thousand shares of stock "free from injunction," and this injunction was duly served on the newly made in-

spectors, before they had received a single vote. Mr. Bush, one of these inspectors, testifies that he did not read the injunction, but handed it over to his counsel and proceeded with the election. A moment's delay seems to have been all the result. A copy of the injunction was handed to Mr. Shearman, who was standing next the inspectors. He examined it, simply said to Receiver Fuller that an election was enjoined unless the votes on the three thousand shares were first received, and Mr. Fuller, who had been waiting to deposit his votes, at once voted, as he himself testifies, on stock which was by him claimed to be void, in opposition to what he knew to be the wishes of its owners. And Mr. Bush, the plaintiff in the suit where the receiver was appointed, made inspector at a sham election, by the votes of rough men, who were not stockholders, brought from New York by Mr. James Fisk, in pursuance of a conspiracy to prevent the true stockholders from electing the directors of their own corporation, received votes, in disobedience of an injunction of the Supreme Court, on stock which he had sworn no one had a right to vote on, in which he himself claimed no interest, in direct opposition to the wishes, as he knew, of the owners of the stock, who were there with their hands tied by injunctions which they obeyed. This was done under the advice of Mr. Thomas G. Shearman, given at the time, as Mr. Shearman himself testifies, in the presence of Mr. David Dudley Field.

The voting then went on at the Fisk poll. But Mr. Ramsey had wealthy friends present. Bail was immediately given for himself, the secretary, and the counsel, a meeting of the legal stockholders was then organized, a new poll opened, the election there went on, in (as the court held) a perfectly regular manner, the Ramsey ticket, as the court decides, was elected, and Mr. Fisk defeated.

And Mr. Justice Smith says in his opinion: "Upon the whole evidence upon this branch of the case, I think I am bound to find, as matter of fact, that there was a preconceived scheme, combination, or conspiracy to carry the election of directors appointed to be held at the time and place aforesaid, by the use and abuse of legal process and proceedings."

"A conspiracy," the court say, "to carry the election by the use and abuse of legal process and proceedings."

The judgment of the court in this cause may possibly be reversed. Be that as it may. For the first time, so far as the writer is aware, in the history of English or American law, a court has decided that there was a "conspiracy and fraudulent design . . . . for the purpose of interfering with and hindering a lawful election, and procuring an unlawful and sham election" of the directors of a corporation; that in the "execution of said conspiracy" parties did "fraudulently procure an order for the arrest" of the officers and counsel of the company; and that there was a "fraudulent conspiracy to carry the election of directors by the abuse of legal process." Grave charges are these against the parties. On their face they would seem to deeply concern counsel. Any court would naturally require very clear evidence before ever giving such a decision. The evidence in this case was very clear. And a slight examination of some points of this evidence will give the means of deciding whether or not the opinion of the court was well founded, and what share Mr. David Dudley Field had in these matters.

In all these suits and proceedings which were taken, in the names of different parties, in the interest of Mr. Fisk, the plaintiff's attorneys were Messrs. Field and Shearman. In this firm Mr. David Dudley Field is a partner, according to the sworn testimony of Mr. Shearman. It does not appear by the evidence that Mr. David Dudley Field personally advised or directed every one of these proceedings. He did personally advise and direct some of them, some of the earliest and some of the latest. But in order to hold him personally responsible for the character of these proceedings, whatever they were, it needs not to show that he personally procured, or directed the procuring, all the obnoxious orders.

No sane man supposes for an instant that any counsel of ordinary shrewdness engages in a litigation like the Susquehanna contest without advising continually at each successive stage of the affair, without being carefully and minutely informed of the contents of every single paper, without thoroughly examining every single fact. Mr. Field is one of the most acute practitioners that has ever been known at the New York bar. Any person who has heard him try a cause in court is well aware how exactly he knows and remembers the slightest par-

ticulars of the most unimportant testimony connected with his case, how his unceasing watchfulness never loses a single point of fact or law. Mr. Field assuredly would consider it an insult to his shrewdness if any one should suppose that he was engaged for one day in this Susquehanna litigation, without thoroughly knowing every the least point in it, from the beginning to the end.

Now, even if Mr. Field had not himself examined an order or process of court before it was obtained by his firm, as soon as he did examine it, if it had been wrongly obtained, he was bound neither to use it himself nor to allow any one else to use it. And if it had been rightly obtained, he was bound neither to "abuse" it himself nor to allow any one else to "abuse" it. In such cases it is not enough for him to say that he is not the whole of the firm of Field and Shearman, and that he did not in person procure the obnoxious order or process. Perhaps any ordinary layman can see that, if the order of arrest for Mr. Ramsey and his counsel, after it was signed, had been quietly laid away in a drawer, no one would have been greatly injured. Probably Mr. Ramsey and his counsel would have been quite content for Messrs. Field and Shearman to obtain orders without number, of all kinds, if they were never used. Mr. Field did himself use these orders. As to some, at least, of these orders and proceedings here related, Mr. Field was "consulted beforehand," and himself advised and directed them.

On the evening of the 6th of August, when the Fisk directors, who had been suspended, came to New York, it will be remembered they went at once to the Grand Opera House, and reached there about six o'clock, P. M. They did not come to hear the witching strains of Offenbach. They were seeking the halls of justice.

This order of the 6th Mr. Field says he did not procure. But did any one procure it? Mr. Field did, in his own person, go to Albany on the 9th, to help get possession, under this order, of this railroad. Mr. Field did, in his own person, for the very same purpose, drag his adversaries before Mr. Justice Barnard, on the 12th, on an order, granted or not granted, "at the court-house in New York City" or elsewhere, by Mr.

Justice Barnard, on the 10th, the day of his mother's funeral in Poughkeepsie.

But for the purposes of this paper the election proceedings have the most interest.

On the evening of the 6th of September, the day before the election, there was a meeting at the Delavan House. There were present, with others, Mr. James Fisk, Jr., Mr. Thomas G. Shearman, and Mr. David Dudley Field. The whole plan of operations for the election was there discussed and arranged. The enjoining of the inspectors was mentioned. The injunction was already there, with the printed copies ready for service. It was then also mentioned that the officers were to be arrested. The order of arrest was then on its way to Albany, and had on that day been obtained in New York on papers drawn days before in the office of Messrs. Field and Shearman. It was, on this evening, too, arranged that a meeting was to be organized at a quarter before twelve, twelve being the hour regularly appointed. "It was part of the programme," says Mr. Shearman. It was also mentioned that "persons" were coming from New York to vote. The first set of resolutions, reciting that the inspectors "have been enjoined," were drawn long before the injunction was served, and copied by Mr. Samuel North, who it was arranged should offer them; and that there might be no mistake, this first set of resolutions was indorsed "immediate," signifying that they were to be offered "immediately" after the meeting was organized. The draft of these resolutions Mr. North swears he received from the hands of Mr. David Dudley Field. The resolutions to the effect that the meeting proceed with the election were drawn hours before the meeting was organized, and copied by the same Mr. North, and he received them at the same place and at the same time. It was arranged who should be nominated for new inspectors at the early meeting. Mr. Hamilton Harris was one of these proposed inspectors. And he testifies that he was asked to be such candidate, "beforehand," by Mr. David Dudley Field. This elaborate mechanism, this "programme" for carrying an election, this enjoining of inspectors, this arresting of officers and counsel, this filling the room where the meeting was to be held with "rough, rude, and dangerous persons," this device of

what the court calls a " sham " meeting before the hour, this preparation of resolutions, this selection of officers, — in whose brain was it begotten, that of client or counsel? And in the brain of which counsel?

And the manner in which this cunningly devised plan was carried out deserves admiration. These " persons " left New York together the day before, and reached Albany in the morning; they breakfasted together, received their proxies together; they were kept together until about half past eleven o'clock, when they marched together to the Susquehanna offices, and together followed Mr. Fisk and Mr. David Dudley Field to the directors' room, which they filled. They voted together at that so-called stockholders' meeting, under Mr. Field's eyes; they voted together in the treasurer's room for directors, by Mr. Fisk's direction, under Mr. Field's eyes. They had been brought from New York that they might so vote, as Mr. Field very well knew.

And as to the arrest suit, the facts are peculiar. Mr. Dudley Field, the son, testified as follows, when examined as to the authority of his firm to bring this action: —

" I have in my possession a resolution of the executive committee of this company requesting our firm to bring this action. I don't know of anything else except a letter received from Mr. Hamilton Harris, which accompanied this resolution, which referred to the bringing of the suit, the contents of which I do not further recollect.

" *Question.* Was the receiving this resolution and letter of Mr. Harris the first information you had of the bringing of the suit?

" *Answer.* No; I had discussed it repeatedly with my father, who is my senior partner, for days before that time, and the bringing the suit was only delayed until we received a formal authorization from the company.

" *Q.* Will you give a copy of Mr. Harris's letter, or that portion relating to this suit, and the resolution?

" *A.* I will give you a copy of that portion; it is dated September 3, 1869, and is addressed to Field and Shearman, and commences with the following words: ' Gentlemen, — Enclosed I send you the resolution of the executive committee of the Albany & Susquehanna Railroad Company, directing proceedings to be instituted for the recovery of the books of the company.' I think that is the letter referred to, but if not, the letter is not in my possession. I will annex to my affidavit a copy of the resolution referred to."

The portion of the resolution referred to reads: —

"*Resolved*, That Field and Shearman be employed to take all legal means for the recovery and restoration of the said books, and for the *arrest* and punishment of the persons abstracting them."

Mr. Hamilton Harris, who is thus stated to have sent this resolution to Messrs. Field and Shearman, authorizing this arrest, testified in relation to the same matter as follows: —

"*Question.* When did you first know of the order of arrest which was issued against Joseph H. Ramsey, William L. M. Phelps, Robert H. Pruyn, and Henry Smith, or either of them?

"*Answer.* *Soon after the poll was closed* I heard that Mr. Ramsey and Mr. Smith had been arrested under some process, which I afterwards learned from Mr. Smith himself was an order of arrest. That is all I know about it.

"*Q.* Was that the first knowledge or information you had of such an order, *or that such an one was to be applied for?*

"*A.* *It was.*"

The defendants against whom this order of arrest was obtained were all well-known citizens of Albany, who had lived there for years. Mr. Henry Smith is one of the first advocates in the State of New York, and one of the leaders of the Albany bar. These defendants were the president, secretary, receiver, and the counsel of a railroad company, which held its annual election at twelve o'clock, noon, on the 7th September, and these four defendants were the head and front of the opposition to the election of the Church or Fisk board, for whom Messrs. Field and Shearman had been counsel through this whole contest. The papers on which this order was obtained were completely ready in Messrs. Field and Shearman's office before the 2d September. Mr. David Dudley Field had already "discussed it repeatedly" with his son and partner. Messrs. Field and Shearman "delayed" the bringing the suit until the resolution of the 3d. Messrs. Field and Shearman "delayed" obtaining the order of arrest until the 6th. Some one or other "delayed" arresting these gentlemen until after the coveted books had actually been returned to the company's office, and until precisely twelve o'clock on the 7th of September, when the loss of one single minute might ruin the labors of a lifetime. Mr. Henry Smith, in his closing argument in the case

already mentioned, said, speaking of Mr. Ramsey's arrest: "I saw this man in charge of the sheriff, and held there as a prisoner, just as this election was to be proceeded with, and at the same time saw David Dudley Field coming in and standing in the doorway, with his fingers in his vest, tauntingly laughing and sneering at him." Mr. David Dudley Field, in his closing argument in this same case, speaking of the same arrest, says: "It is clear that nobody in the Church party had anything to do with that arrest at that particular time."

This arrest suit was afterwards dismissed by the court, after hearing Mr. David Dudley Field in opposition thereto, and after reading his partner's affidavit, on the ground that it had been brought without any authority.

And this is, according to Mr. David Dudley Field, practice of the law. Is there not danger lest, if such practice obtain, the delicate courtesies and gentle sentiments of the profession be lost?

Mr. David Dudley Field has seen the palmy days of the New York bar. What are to the younger men of the profession merely dim traditions of a past age, are to him the fresh memories of a present life. Mr. Field is a legacy to the present generation at the bar from the golden age when, as we are told, counsel showed one another the knightly courtesy of a Bayard. He was taught in the days of Chancellor Kent. He is one of the most eloquent apostles of legal reform. He is, even now, urging an amendment to the New York code, providing that no receiverships shall be granted on the *ex parte* order of a judge. To him, probably more than to any other one man, the people of New York are indebted for the code of procedure. To him, of course, one of the oldest, ablest, and most cultivated members of the bar, the younger men are to look for an example of professional conduct. And they are to look for this example, doubtless, in Mr. Field's management of these Fisk litigations. For it is of them that Mr. Field says: "Nothing but a profound conviction that I could not with honor retire from these suits has kept me in them. Being in them, I shall do my whole duty to my clients." And this "whole duty to the clients" consists, we are to infer, in the devising and carrying out a transaction like the following.

Mr. James Fisk and his associates, all of them, in this matter, clients of Mr. David Dudley Field, acting under his advice, endeavor to get control of a railroad and elect its board of directors. As the court has decided, they own not more than a fifth of its stock. This is their procedure. They suspend the president, who is opposed to them, by an order of Mr. Justice Barnard, granted, as they themselves show, without a hearing, on not one word of evidence. They tie their opponents hand and foot with injunctions restraining any application for relief, "except to this court in this action," "this court" being Mr. Justice Barnard. They pack a "sham" meeting with "rough" men from New York, Mr. David Dudley Field himself being at their head, to hinder the stockholders of the company from meeting in their own office to protect their own property. To bar the possibility of these stockholders meeting anywhere else, Messrs. Field and Shearman, at the very moment of the election, when an hour's delay costs millions of property, have the sheriff arrest the officers and counsel of this company, in a suit commenced, without authority, under the advice and direction of Mr. David Dudley Field; and the arrest is made under his eyes to his complete satisfaction. They pretend to elect a board of directors by votes cast on stolen stock, in defiance of an injunction of the Supreme Court. And, after all, they commit the unpardonable sin of failure.

All this is done in pursuance of a cunningly devised plan. The court call it a "fraudulent conspiracy." Mr. Shearman calls it a "programme." Mr. Fisk calls it a "raid."

In "conspiracies" there are no accessories. All are principals. This particular "conspiracy" did not spring, Minerva-like, from the brain of Mr. James Fisk. Mr. David Dudley Field, for one, helped devise it. Mr. David Dudley Field, for one, did execute it. Other lights of the bar, doubtless, had their share in it. Do they wish to claim it?

And this is, it is to be presumed, the "whole duty to clients." These are, it is to be presumed, the proceedings in which Mr. David Dudley Field is kept by "nothing but a profound conviction that he cannot with honor retire" from them. This is, it is to be presumed, Mr. Field's lesson to us from the days of Chancellor Kent.

And is the order of arrest henceforth to be one page of the advocate's brief?

It may be said, perhaps, that, after all, this decision of Mr. Justice Smith is merely the decision of a single judge; that it may be all wrong, may be reversed on appeal; that it is, as yet, too early to judge Mr. Field. The matters here stated in relation to Mr. Field do not in the least degree depend on the correctness or incorrectness of the decision of Mr. Justice Smith. To be sure, the language of that decision has been here sometimes borrowed, but merely for the purpose of showing that very respectable authority has already given a name to some of these proceedings taken on the part of Mr. Field's office. But the point of that decision is, Which board of directors was or was not legally elected? With that point we have here nothing whatever to do. It has been attempted here to make clear the character of some of those legal proceedings, by statements which are true, and which remain true whether Mr. Justice Smith's decision be reversed or not. And as to the direct share of Mr. David Dudley Field in these proceedings, no word of comment is here given, nor do any of the statements here made in relation thereto depend in any degree upon the decision of Mr. Justice Smith. These statements are made solely on the sworn testimony of Mr. Field's clients and his associate counsel. Mr. Field, assuredly, will not question the veracity of these witnesses.

Nor has Mr. Field been unheard in these matters. If guilty of anything, he is guilty of the same charges on which judgment has already gone against his clients in the case already mentioned. In that case Mr. Field and his associate counsel, with consummate ability, produced their witnesses, and argued the law and the facts before an able and impartial judge. He did his utmost there to clear his clients and failed. The issues and evidence here are precisely the same as in that case.

No one can ask of Mr. Field a higher standard of professional conduct than he himself lays down in this correspondence with Mr. Bowles. He says, "The lawyer is responsible, not for his clients, nor for their causes, but for the manner in which he conducts their causes." "I do not assent to the theory of Brougham, that the lawyer should know nobody but his client.

I insist that he should defend his client *per fas* and not *per nefas*. By this rule I am willing to be judged."

And Mr. Field says: "I have never been consulted beforehand . . . . about any transaction whatever of this company or these gentlemen, to which, so far as I now recollect, any exception has been taken."

Does Mr. Field "recollect" this Susquehanna litigation?

And Mr. Bowles admits that Mr. Field "believes himself right"; that Mr. Field has "sinned against no statute," and has not "violated any prescript of the code professional."

In the New York Revised Statutes, Vol. II. p. 691, are certain definitions and certain penalties of certain conspiracies. A portion of the statute reads as follows: "If two or more persons conspire . . . . falsely and maliciously to indict another for any offence, or to procure another to be charged or arrested for any such offence, or falsely to move or maintain any suit, or for the perversion or obstruction of justice, or the due administration of the laws, they shall be deemed guilty of a misdemeanor." Whether or not any of the matters here related fall within the definitions here cited, or either of them, need not here be discussed.

Mr. Warren, in his work on Law Studies, Vol. I. p. 423, after relating a case of professional misconduct on the part of a member of the English bar, adds: "This case has been presented to the reader because of the singularity of its circumstances. It appears to be the only instance recorded in the books of misconduct by a member of the bar, judicially cognizable, and punished, because of his being such."

ALBERT STICKNEY.